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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,690	03/01/2004	Thomas G. Frazier	1457P	7029

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EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/788,690

Applicant(s)

FRAZIER, THOMAS G.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Andrews (3,393,962).

The Andrews reference discloses a single use applicator for dispensing and applying a uniform layer of viscous fluid which comprises an outer chemically inert cylindrical deformable tube 1, closed at one end, and open at the other, the open end 14 having a tapering rim section 16 thereon, a hermetically sealed crushable glass ampoule 3 carried in said tube, a viscous fluid in the ampoule 3 to be dispensed, an applicator element means 15 being comprised of a plurality of synthetic fiber strands in side by side relationship, the tube 1 is compressed at its rim section, compressing said fiber strands at the approximate mid point of applicator element 15, creating a fluid control valve section and forming an hour glass configuration, and the applicator element structure has an internal fluid reservoir section adjacent to the ampoule 3 and an external fluid application tip section adjacent to the valve section.

Regarding claim 11, as noted it is not specific as to what sufficient strength the tubular body is, the Andrews tubular body portion 1, which has sufficient strength and

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wall thickness, is capable of protecting the enclosed ampoule from accident breakage during shipment and handling prior to use as claimed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962).

Although the Andrews reference does not explicitly disclose what dimension of the diameter of the control valve is, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a thickness within a certain range to best fit a particular applicator design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962).

Although the Andrews reference does not disclose that the viscous material has suspended solids, cosmetics having suspended solids, such as color pigments, are known. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select a cosmetic material having suspended solids, since

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selecting a known material on the basis of its suitability for the intended use is a mere matter of obvious design choice. In re Leshin, 125 USPQ 416.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962) in view of applicant's admitted prior art.

Although the Andrews reference does not specifically disclose that the tube is made of polyethylene, such plastic material is well known in the art as admitted by applicant on page 10 of the specification.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a tube made of polyethylene resin, wherein doing so would be a matter of obvious design choice

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962) in view applicant's admitted prior art.

Although the Andrews reference does not specifically disclose that the ampoule is made of onion skin glass, such a material is well-known in the art as admitted by the applicant on page of the specification.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an onion skin type of glass for the Andrews ampoule, wherein doing so would be a matter of obvious design choice.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962) in view of Weinstein (4,957,385).

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Although the Andrews reference does not disclose the applicator including cap, attention directed to the Weinstein reference which disclose another ampoule applicator comprising a cap 9 for sealing the applicator member when not in use.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Andrew applicator with cap in view of the teaching of the Weinstein reference for sealing the applicator member when not in use.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962) in view of Provenzola (5,548,016).

Although the Andrews reference does not specifically disclose that the fluid used with the application is an isocyanate based primer, attention is directed to the Provenzola reference which teaches an isocyanate based primer fluid having black solids.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the Andrews applicator with an isocyanate based primer in view of the teaching of the Provenzola, wherein so doing would a mere substitution of one functional equivalent fluid for another that would work equally well with the applicator of Andrews.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962) in view of Bennett (4,732,287).

Although the Andrews reference shows that the tube rim section 4 is secured to the tube 4 by force-fit, other type connections, such as welding, could be used. Attention is directed to the Bennett reference which teaches another application device having tube rim section 18 connected to the tube 10 by sonically welding.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to connect the tube rim section 4 to the tube 1 of the Andrew applicator device in view of the teaching of the Bennett reference for better securing the rim section to the tube.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962) in view of Bennett (4,732,287).

Although the Andrews reference shows that the applicator element is secured to the tube rim section 4 by a spring clip 16, other securing means, such as welding, could be used. Attention directed to the Bennett reference which teaches another application device having bristles 32 connected to the application element 26 by welding.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to secure the tube rim section 4 to the application member 115 of Andrews by welding, wherein so doing would amount a mere substitution of one functional equivalent securing means for another within the same art that would work equally well in the applicator of Andrews.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews (3,393,962) in view of Gueret (5,899,622).

Although the Andrews reference does not disclose that the fiber bristles are bonded along its axial length, attention is directed to the Gueret reference which teaches an application device having bristles bonded together by welding.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to bond fibers of the Andrews applicator together in view of

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the teaching of the Gueret reference for more securely retaining the bristles to the application element.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weinstein, Rosen, Chari et al, Chernack, Hamilton, Schulz and Robert reference shows applicators having breakable ampoules.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 703-306-5504. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Huyen Le
Examiner
Art Unit 3751

HL
September 8, 2004